

GARY R. WHITMAN
February 9, 2010

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF INDIANA
3 INDIANAPOLIS DIVISION
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6 NICHOLAS A. GREEN : CIVIL ACTION

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8 :

9 VS. :

10 :

11 : Cause No.

12 FORD MOTOR COMPANY : 1:08-CV-0163-LJM-TAB

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15 ORAL DEPOSITION OF GARY R. WHITMAN

16

17 February 9, 2010

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1 BY MR. SCHIFERL:

2 Q. I've marked as Exhibit 2 -- what is the
3 item I marked as Exhibit 2?

4 A. I'm sorry?

5 Q. What is the item I've marked as Exhibit
6 2?

7 A. This is my Curriculum Vitae.

8 Q. Sir, I know a lot of your background
9 and all this, but let me ask, have you ever
10 participated as the designer of automotive
11 components that are incorporated in motor vehicles
12 sold to the motor vehicle public in the United
13 States?

14 A. By the motor vehicle public, are you
15 excluding Army and soldiers?

16 Q. I'm talking about vehicles that you or
17 I or anyone on the jury could go to a car lot and
18 purchase?

19 A. I would say no.

20 My participation in the design
21 of components has been for the Army, as far as
22 ground vehicles are concerned.

23 Q. The work that you indicated as
24 specialized area, there are ten listed here.

25 Let me ask, do you intend, in

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1 A. I did.

2 Q. I don't want to put words in your
3 mouth, but you generally tend to provide testimony
4 in that area, as opposed to the testimony you just
5 described you understand Dr. Shanahan to be
6 providing?

7 A. Well, I'm going to talk about the
8 kinematics, as I said, in terms of the general
9 kinematics as to what you expect to see in
10 rollover crashes based upon the type of restraint
11 and the design that we have here and the testing
12 that's been conducted on restraint systems.

13 Dr. Shanahan, I think, will be
14 more case specific, in how those kinematics
15 resulted in the injuries that Mr. Green sustained.

16 Q. Next you list down here, a specialized
17 area of, quote, human subject crash testing, end
18 quote.

19 First of all, what do you mean
20 by that?

21 A. Well, human subject crash testing would
22 be testing conducted with human subjects or
23 surrogates.

24 Q. Did you conduct any such testing,
25 yourself, in this case?

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1 A. No, I did not.

2 Q. Do you intend to offer any opinions
3 about that matter in this case?

4 A. In regards to the testing that was
5 conducted by Mr. Scott and Mr. Cooper, yes, I will
6 be discussing that testing, but that's not testing
7 that I was involved in conducting.

8 Q. Let me lay something perhaps to rest
9 right away.

10 Have you read Mr. Cooper's
11 deposition?

12 A. No, I have not.

13 Q. You've indicated -- you said the
14 testing conducted by Mr. Cooper. I'll represent
15 to you that I took his deposition and in his
16 deposition he indicated he did no testing. That
17 he was present when testing was done, but
18 conducted no testing himself.

19 Were you aware of that?

20 A. I'm not aware of the exact role of
21 Mr. Cooper versus Mr. Scott or anyone else that
22 did the testing.

23 I know they were both there.
24 I'm assuming that they both had some participation
25 but what that exact participation was, I don't

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1 Q. Do you make it a habit, sir, of relying
2 for your testimony upon testing conducted by
3 counsel in cases?

4 A. Do I make a habit of it? No, I would
5 say it's not that common an event, but the testing
6 does exist. So, I'm certainly going to look at it
7 for its merits.

8 Q. Let me go into that a little further.

9 Outside of this case, this
10 Green case, have you ever before relied upon
11 testing conducted by counsel in a case?

12 A. I can't think of a specific case, but I
13 believe there has been testing conducted,
14 independent of me, by counsel.

15 When you say conducted by him,
16 do you mean just his running the test or having
17 someone else run the test?

18 Q. I'm talking about -- well, you've read
19 Mr. Scott's deposition; correct?

20 A. Right.

21 Q. You understood from Mr. Scott's
22 deposition that he was the test engineer, if you
23 would, as well as the surrogate in the test;
24 correct?

25 A. Yes.

1 Q. Have you ever provided testimony, in
2 which you rely on testing which was conducted by a
3 plaintiff's counsel, where they were the test
4 designer and participant, themselves, in the test?

5 A. I can't think of one off the top of my
6 head, no.

7 Q. You list an area of specialty as a,
8 quote, injury mechanism analysis, end quote.

9 What do you mean by that term
10 that would be different than the term, quote,
11 occupant kinematics we discussed before?

12 A. Well, a part of my role, particularly
13 with the Navy, and since then, has been to analyze
14 test data, dummy response data, and compare that
15 to established injury criteria, to determine
16 whether or not the system is meeting requirements
17 and avoiding injury mechanisms.

18 Q. Do you intend to provide testimony in
19 the area of injury mechanism analysis in this
20 case?

21 A. In terms of performance restraint
22 systems, I'll be discussing that, but in terms of
23 what happened in this crash and the injury
24 mechanisms, that will be Dr. Shanahan.

25 Q. You, in giving a description for injury

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1 just articulating what I had said.

2 Q. And, sir, I'm going to hand you a blank
3 piece of paper, labeled as Exhibit 3, along with a
4 pen, and ask you, would you please list on Exhibit
5 3 for me, all SUVs available in the public
6 marketplace to purchasers of vehicles in the
7 United States, that would meet the Federal Motor
8 Vehicle Safety Standards for SUVs and that meet
9 the Gary Whitman standard of appropriate crash
10 survivability?

11 MR. SCOTT: Are you talking now
12 or at the time of this event?

13 MR. SCHIFERL: In 1999.

14 THE WITNESS: I have not done
15 such a study, where I've gone out and
16 identified a particular SUV that meets my
17 requirements.

18 I've simply looked at the
19 Explorer and looked at its features and
20 identified issues with it.

21 I have not gone and looked at
22 alternative SUVs specifically. So, I can't
23 give you a list such as that.

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25 BY MR. SCHIFERL:

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1 Q. Well, I'm wondering, Mr. Whitman, you
2 criticize, as we talked about, Ford Motor Company
3 for not meeting what you believe to be appropriate
4 standards.

5 So, certainly, then, there's
6 got to be someone out there, in the universal
7 world of motor vehicle manufacturers, that would
8 meet the Gary Whitman standard and I'm just
9 wondering who they are?

10 MR. SCOTT: I have to object to
11 the question as asked, because I think that
12 you have to include in the question up to
13 the point where this event occurred, and
14 this event occurred in 2006, as to the
15 designs that would have been available as
16 of 2006.

17 MR. SCHIFERL: Well, actually,
18 counsel --

19 MR. SCOTT: The question of
20 feasibility then becomes -- then becomes
21 the issue.

22 MR. SCHIFERL: Well, actually,
23 counsel, the standard in Indiana, as you
24 well know, was judged as of the time of
25 manufacture of the product at issue.

1 BY MR. SCHIFERL:

2 Q. So, my question remains, Mr. Whitman,
3 certainly someone out there meets the Gary Whitman
4 standard, and I'm just trying to find out who that
5 is.

6 Are you able to tell us who it
7 is?

8 A. I have not gone out and looked at each
9 SUV, particularly that was available in 1999 or
10 before, and said, okay, this one has all the
11 features that I would look for in an SUV.

12 I haven't been tasked to do
13 that.

14 What I have done is I've looked
15 at the Ford Explorer and I've identified the
16 deficiencies that I believe that it has, that
17 fails to optimally protect the occupant.

18 But I have not made any attempt
19 to identify 1999 vehicles that do or do not
20 incorporate features that I'm talking about.

21 Q. So, if I were to ask a similar question
22 of you with our jury, you will be unable to answer
23 that question?

24 MR. SCOTT: I assume, again,
25 1999 or before?

1 MR. SCHIFERL: That's correct.

2 THE WITNESS: Right. I have
3 not done such a study to identify a
4 specific alternative vehicle for 1999.

5 MR. SCHIFERL: I think the
6 record will speak as to what Exhibit 3 then
7 is.

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9 (Blank sheet of paper marked
10 for identification as Exhibit 3, not
11 retained by Court Reporter)

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13 BY MR. SCHIFERL:

14 Q. Going back to Exhibit 2, sir, you have
15 listed an area of specialty of, quote, occupant
16 restraint systems design and testing, end quote.

17 Do you intend to offer
18 testimony in that area?

19 A. Yes.

20 Q. I think I asked before, but let me just
21 make sure I'm clear.

22 With regard to occupant
23 restraint system design, have you participated in
24 the design of any occupant restraint systems
25 incorporated into motor vehicles available for